Single Bench (1) (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 4944/2004

PETITIONER

Rakesh Kumar Jaiswal, aged about 42 years, son of Shri R.P. Jaiswal, occupation – Deputy Commissioner, Nagar Nigam, Raipur (Chhattisgarh), resident of – Revenue Colony, Seepat Road, Sarkanda, Distt. Bilaspur (Chhattisgarh)

P.R. No. 5047/04 Baked
Presented by Shri Sunil Kumar
dated 24/12/04

VERSUS

RESPONDENTS

1. Chhattisgarh Public Service Commission through : Its Secretary, Raipur (C.G.)

2. State of Chhattisgarh, through : the Secretary, Department of General Administration, D.K.S. Bhawan, Raipur (Chhattisgarh)

RECEIVED COPY
24/12/04
for self & A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE ORDER / ORDERS, DIRECTION / DIRECTIONS.

A.P.R (55)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No 4244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	5-1-2005 Smt. Hamida Siddique, counsel for the petitioner. Shri Prashant Mishra, Additional Advocate General for the State. Rejoinder has been filed on behalf of the petitioner. As the pleadings are complete, therefore, it was decided to dispose of this matter finally at the admission stage itself. By this writ petition filed under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 7-12-2004 (Annexure-P/1) whereby the petitioner's application for appearing in the interview for the post of Deputy Director has been rejected by respondent No.1, Chhattisgarh Public Service Commission on the ground that the petitioner does not possess the requisite experience as per the eligibility criteria. Brief facts leading to filing of this writ petition are that on a requisition received from the Department of Education respondent No.1 herein vide Annexure-P/2 invited the applications for filling up the vacancies in the Education Department to the posts of Deputy Director (Education), D.I.E.T. (District Institute of Educational Training) Principal and Lecturers (Education College Cadre). In response to the said advertisement the petitioner herein also sent an	

GL PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

application for the post of Deputy Director. However, his application was rejected vide communication Annexure-P/1 sent by respondent No.1 Public Service Commission on the ground that the petitioner does not possess the requisite experience.

The controversy involved in this matter is the interpretation of the eligibility criteria for appearing in the interview for the post of Deputy Director. English translation of that reads thus: '(i) for the post of Deputy Director the candidate must possess 2nd class post graduation decree of any recognized University' and in the experience clause it has been mentioned that (ii) the candidate must have 10 years teaching experience of Higher Secondary Classes and minimum 3 years administrative experience.

The case of the petitioner is that as far as first criteria is concerned, the petitioner possess the experience of teaching of Higher Secondary Classes and certificate to that effect is Annexure-P/4 and the same has not been made ground for rejection of the application of the petitioner. Further case of the petitioner is that in the year 1996 he was selected as Grade-II i.e. Chief Municipal Officer by the Public Service Commission and since March, 1996 he is working on that post. Presently, he is working on the post of Deputy Commissioner, Nagar Nigam, Raipur, therefore, as per the

GR PRJ—FS/350—12/2000—50,000.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

advertisement inviting applications he possess the requisite experience.

Whereas, reply of the respondent No.1 is that in order to become eligible for the post of Deputy Director the candidate must possess 3 years of administrative experience in the field of Education and not in other departments, which was the requirement of the notification dated 9-7-2003. The post of Deputy Director (Education) is a post of administrative nature controlling and coordinating various teaching institutions at the Primary, High and Higher Secondary level, therefore, any other administrative experience of any other department cannot be considered to be an administrative experience for the post of Deputy Director (Education). Accordingly, a requisition was sent by the Deputy Director Public Instructions Chhattisgarh to the Public Service Commission requesting the Public Service Commission to recruit the candidate for the post of Deputy Director (Education) vide Annexure-R/1.

Further case of the respondents is that even according to Schedule 3 of the M.P. School Education Gazetted Service Recruitment and Promotion Rules, 1982 (hereinafter referred to as 'the Rules') minimum qualification for the post of Deputy Director (Education) is Post graduate degree (minimum IInd Division) Arts,

Gr. PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Commerce, Science or equivalent qualification. 10 years experience administration and teaching at the Higher Secondary School level of which at least 3 years must be on the administrative side.

I have heard learned counsel for the parties.

Learned counsel for the petitioner, while placing reliance on the judgment of the Hon'ble Apex Court in the matter of **Bibhudatta Mohanty V. Union of India and others** reported in **2002 AIR SCW 1379**, submitted that in the advertisement/notification issued by respondent No.1 Public Service Commission it has nowhere been mentioned that the administrative experience must be in the field of education. It has simply been mentioned in the eligibility criteria that the candidate must possess minimum 3 years of administrative experience. While elaborating her arguments, she further submitted that if we look into the same advertisement for the posts of D.I.E.T. and Lecturers it has been specifically mentioned that the administrative experience must be in the field of education and no such specific criteria was published for the post of Deputy Director (Education), therefore, it has to be interpreted by reading the condition published in a simple manner and a plain meaning should be given to the condition published in the advertisement. It cannot be read otherwise and no casus omissus can be supplied in order to stretch the meaning administrative experience to the extent of

Gr. PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

administrative experience in the educational field. While relying on the judgment of the Hon'ble Apex Court in the matter of **Padmasundera Rao (Dead) & Ors. versus State of T.N. & Ors.** reported in **2002 SAR (Civil) 325** she further submitted that the intention of the Legislation must be found in the words used by the Legislature itself and the Court cannot read anything into a statutory provision which is plain and unambiguous. She further submitted that in the matter of public employment all the citizens must be given equal opportunity and they are entitled to share and it cannot be monopolized for any particular class.

On the other hand, Shri Prashant Mishra, learned Additional Advocate General, submitted that as per the Rules, the eligibility criteria for the post of Deputy Director is that the candidate must possess 10 years teaching experience at the Higher Secondary Level and minimum 3 years administrative experience in the field of education. Similarly, Education Department sent the requisition Annexure-R/1 to the respondent No.1 in which same condition as in consonance with the Rules was specifically mentioned and based on that Annexure-R/1 respondent No.1 Public Service Commission advertised the posts. He further submitted that if the eligibility criteria which has been published in the advertisement (Annexure-P/2) is read together, the real meaning which can be given to the

GL PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

advertisement will be to the effect that the candidate must possess 3 years experience in the field of education and not in other department.

Having heard learned counsel for the parties, I have perused relevant documents, rules and case laws cited by learned counsel for the petitioner. As far as the arguments of learned counsel for the petitioner that every citizen is entitled for equal opportunity in the matter of public employment and in the matter of public employment no post can be monopolized for the particular class is concerned, argument of learned counsel for the petitioner is true and same is based on the law laid down by the Hon'ble Apex Court, but we have to see whether the above principle has been violated in the present case. It cannot be legally disputed that the Government Public Authorities are entitled to fix the eligibility criteria for a particular post and the candidate must possess the qualification and eligibility criteria fixed by the Government and only those candidates who possess the requisite qualification can apply for the post. In that light we have to examine the present case whether the eligibility criteria fixed by the respondents in any way is against the spirit of law.

As far as the matter of **Bibhudatta Mohanty (Supra)** cited by learned counsel for the petitioner is concerned, advertisement was issued by the employment exchange for filling up the posts of Extra

GI.PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Departmental Mail Carriers and in that advertisement for a candidate to become eligible qualification was fixed as class-8th and in pursuance of that applications were received and the candidates were selected and appointed. Those appointments were challenged by Bibhudatta Mohanty on the ground that as per the guidelines, apart from the educational qualification, other condition was that preference would be given to SSC passed candidates. Since the selected candidates were not SSC passed candidates, therefore, the selection was bad. Considering those facts the Hon'ble Apex Court held in that matter that since the requisition sent by respondent No.4 to the Employment Exchange, candidates having VIII class passed qualification were called for consideration and in the requisition preference to the SSC passed candidate was not mentioned. The Hon'ble Apex Court held that in the first instance in the requisition sent by the Department to the Employment Exchange 8th class pass qualification was communicated and same was published and accordingly candidates were interviewed and preference clause was not given in the requisition. The Hon'ble Apex Court further held that the preference clause for higher qualification does not mean that irrespective of fulfillment of other norms SSC passed have to be preferred. Where any rule or guideline provide preference in respect of some higher qualification, it only means that all other requirements

GR PRJ—FS/350—12/2000—50,000.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

being equal a person possessing higher educational qualification will be preferred. It cannot, however, be considered as the sole criteria for preference in selection and appointment. Therefore, in that matter the candidates who were selected, they were in possession of minimum qualification that is why the Hon'ble Apex Court held that the selection was not bad. On the facts this case is of no help to the petitioner. If we look into the facts of the present case, in Schedule 3 of the Rules, for the post of Deputy Director the eligibility criteria is minimum 3 years of administrative experience in the field of education apart from 10 years teaching experience and in consonance with the said Rule the Government sent the requisition proforma Annexure-R/1 to the respondent No.1 for filling up the posts and in the experience clause it was specifically mentioned that 10 years of educational and administrative experience in which 3 years of experience on administrative side and in the advertisement which was issued by respondent No.1 Annexure-P/2 it was mentioned that 10 years teaching experience at the Higher Secondary level and minimum 3 years administrative experience. Therefore, looking to the requirement of Rules and requisition Annexure-R/1 it cannot be said that the department did not ask for 3 years administrative experience in the field of education. Conjoint reading of the Rules, requisition and the advertisement makes it clear that the

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~administrative experience which has been mentioned in the~~ advertisement relates to the experience in the field of education. As has been held by the Hon'ble Apex Court in the matter **Padmasundera Rao (Dead)** (Supra) that the principle of casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature.'

It is an admitted position that the advertisement has been issued for the post of Deputy Director (Education), therefore, the candidate must possess the requisite administrative experience in the field of education only so that he can discharge his duties efficiently and effectively in order to administer the school education and for that purpose the post is created. Administrative experience in other fields to my mind to a great extent cannot be useful for

GLPRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —16—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

administration in the educational institutions, as such only and only interpretation can be given to the experience clause published in the advertisement (Annexure-P/2) is that the candidate must have 3 years of administrative experience in the educational field and not otherwise that is the only purposive and meaningful interpretation can be given to the published criteria condition. Any other interpretation may lead to absurdity and same will be contrary to the spirit of the Rules, 1982 and requisition sent by the Government.

As far as the argument of the learned counsel for the petitioner that in the same advertisement for post Nos. 2 and 3 it has been specifically mentioned that the candidate must possess administrative experience in the field of education, whereas, for the post No.1 that is Deputy Director (Education) it has not been specifically mentioned that the administrative experience must be in the field of education.

As has been discussed above that the eligibility criteria which has been published in the Annexure-P/2 same has to be interpreted in consonance with the requirement of the Rules and the Rules specifically laid down that for the post of Deputy Director the candidate must possess 3 years administrative experience in the field of education, therefore, by not mentioning the specific word administrative experience in education, looking to the facts and

GR PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —11—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	circumstances of the case, does not make any difference because first part of this experience clause is that the candidate must possess 10 years teaching experience up to Higher Secondary level and thereafter adding the word "**and**" it has been mentioned that the candidate must possess minimum 3 years administrative experience. Second part of this has to be read with first part and if both are read together then only meaning which can be given to this is that the administrative experience must be in the field of Education only. Therefore, in view of the above discussion, I am of the opinion that as per the advertisement for the post of Deputy Director (Education) the candidate must have experience on the administrative side in the field of education only, as such the Public Service Commission has rightly rejected the application of the petitioner. In the result, I do not find any substance in the writ petition, same is liable to be dismissed and it is accordingly dismissed. Cost is made easy. Certified copy as per Rules. Sd/- L.C.BHADOO Judge	

Barve

Gr. PRJ—FS/350—12/2000—50,000.